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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

<p>ALICIA LANDER</p> <p>PLAINTIFF,</p> <p>V.</p> <p>HUNT &amp; HENRIQUES; PORTFOLIO RECOVERY ASSOCIATES, LLC.</p> <p>DEFENDANT.</p>	<p><b>CV: 12 1867</b></p> <p><b>COMPLAINT FOR DAMAGES</b></p> <p><b>JURY TRIAL DEMANDED</b></p> <p><b>LB</b></p>
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**INTRODUCTION**

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

**FILED**  
APR 13 2012  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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*[Handwritten signature]*

1 to insure that those debt collectors who refrain from using abusive debt  
2 collection practices are not competitively disadvantaged, and to promote  
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system  
5 and grantors of credit to consumers are dependent upon the collection of just  
6 and owing debts and that unfair or deceptive collection practices undermine  
7 the public confidence that is essential to the continued functioning of the  
8 banking and credit system and sound extensions of credit to consumers. The  
9 Legislature has further determined that there is a need to ensure that debt  
10 collectors exercise this responsibility with fairness, honesty and due regard  
11 for the debtor's rights and that debt collectors must be prohibited from  
12 engaging in unfair or deceptive acts or practices.

13 3. Alicia Lander, (Plaintiff), through her attorneys, brings this action to  
14 challenge the actions of Hunt & Henriques ("Defendant H&H") and Portfolio  
15 Recovery Associates, LLC, ("Defendant PRA") (collectively "Defendants"),  
16 with regard to attempts by Defendants to unlawfully and abusively collect a  
17 debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

18 4. Plaintiff makes these allegations on information and belief, with the exception  
19 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which  
20 Plaintiff alleges on personal knowledge.

21 5. While many violations are described below with specificity, this Complaint  
22 alleges violations of the statutes cited in their entirety.

23 6. Unless otherwise stated, all the conduct engaged in by Defendants took place  
24 in California.

25 7. Any violations by Defendants were knowing, willful, and intentional, and  
26 Defendants did not maintain procedures reasonably adapted to avoid any such  
27 violation.  
28

8. Any and all violations alleged against Defendant H&H are imputed to PRA under the theory of vicarious liability, because the actions undertaken by Defendant H&H were an attempt to collect the alleged debt by an attorney's office on behalf of Defendant PRA.

9. All violations alleged under the FDCPA are alleged as to all named Defendants.

10. All violations alleged under the Rosenthal Act are alleged as to all named Defendants.

#### JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

11. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

12. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").

13. Because Defendants do business within the State of California, personal jurisdiction is established.

14. Venue is proper pursuant to 28 U.S.C. § 1391.

15. At all times relevant, Defendants conducted business within the State of California.

16. Intradistrict assignment to the San Francisco Division or Oakland Division is proper because a substantial part of the events or omissions which gave rise to the claim occurred in a county within the purview of these divisions.

**PARTIES**

17. Plaintiff is a natural person who resides in the City of San Leandro, State of California.
18. Defendant PRA is located in the City of Norfolk, in the State of Virginia.
19. Defendant H&H is located in the City of San Jose, in the State of California.
20. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
21. Defendants are persons who use an instrumentality of interstate commerce or the mail in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).
22. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).
23. Defendants, in the ordinary course of business, regularly, on behalf of themselves, or others, engage in debt collection as that term is defined by California Civil Code § 1788.2(b), are therefore debt collectors as that term is defined by California Civil Code § 1788.2(c).
24. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).



**FACTUAL ALLEGATIONS**

25. Sometime before July 29, 2011, Defendant PRA, through its attorneys Defendant H&H, filed a state court collections action against a California consumer named "Alicia Landers" for a financial obligation.
26. The "Alicia Landers" that Defendants received a judgment against was and is not the current Plaintiff in this action, "Alicia Lander," and the two of them have a different name.
27. These financial obligations were primarily for personal, family or household purposes and are therefore a "debt" as that term is defined by 15 U.S.C. §1692a(5).
28. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a "debt" as that term is defined by California Civil Code §1788.2(d), and a "consumer debt" as that term is defined by California Civil Code §1788.2(f).
29. Sometime thereafter, but before July 29, 2011, Defendant PRA through its counsel Defendant H&H, obtained a court judgment against "Alicia Landers" in the state court collections action. Ms. Lander was not involved in that action.
30. Sometime thereafter, but before July 29, 2011, Defendant PRA, through its counsel Defendant H&H, falsely alleged to Ms. Lander's employer that Ms. Lander owed the debt actually owed by Alicia *Landers*, and served on Ms. Lander's employer an earnings withholdings order pursuant to the court judgment issued in the state court collections action against "Alicia Landers." This reckless action by Defendants caused Ms. Lander significant actual damages.
31. Through this conduct, Defendants used a false, deceptive, or misleading representation or means in connection with the collection of a debt.

1 Consequently, Defendants violated 15 U.S.C. § 1692e and 15 U.S.C. §  
2 1692e(10), as well as Cal. Civ. Code § 1788.17.

3 32. Through this conduct, Defendants made a false representation concerning the  
4 character, amount, or legal status of a debt. Consequently, Defendants  
5 violated 15 U.S.C. § 1692e(2)(A) as well as Cal.Civ.Code § 1788.17.

6 33. On or about July 29, 2011, Ms. Lander received notice from her employer that  
7 her wages were being garnished pursuant to an earnings withholding order.

8 34. Ms. Lander has never used the name "Alicia Landers" nor was Ms. Lander  
9 the named defendant in the state court collections action. Despite these facts,  
10 Defendants continued to allege that the debt in question was owed by Ms.  
11 Lander. Despite these facts, Defendant continued to attempt to collection  
12 procedures for the alleged debt from Ms. Lander.

13 35. On or about August 1, 2011, Ms. Lander spoke with a representative of  
14 Defendant H&H, as an agent of Defendant PRA. After Ms. Lander's advised  
15 Defendants that they were collecting from the wrong person, the H&H  
16 representative told Ms. Lander that the alleged debt stemmed from an unpaid  
17 account with "Gateway" issued by "HSBC" and that Ms. Lander's only  
18 option was to pay the debt.

19 36. Through this conduct, Defendants used a false, deceptive, or misleading  
20 representation or means in connection with the collection of a debt.  
21 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §  
22 1692e(10).

23 37. During this conversation, Ms. Lander advised Defendants that she was not the  
24 person who owed the alleged debt, but Defendants refused to listen. At one  
25 point Ms. Lander asked to speak with the manager and was connected with  
26 "Barbara Jordan."

27 38. After explaining that Ms. Lander is not "Alicia Landers" and has never used  
28 the name "Landers", Ms. Jordan told Plaintiff to provide a lease agreement, a

1 utility bill, and verification from Plaintiff's employer showing that Plaintiff's  
2 name is "Lander" not "Landers".

3 39. On or about August 15, 2011, Ms. Lander complied with Ms. Jordan's request  
4 by faxing Ms. Lander's lease agreement, a PG&E bill, and verification from  
5 her employer to Ms. Jordan.

6 40. On or about August 18, 2011, Defendant H&H, ignored this proof that  
7 Defendants were violating the FDCPA and California's Rosenthal Act and  
8 chose to garnished twenty-five percent (25%) of Ms. Lander's wages in its  
9 capacity as an agent for Defendant PRA.

10 41. Through this conduct, Defendants used an unfair or unconscionable means to  
11 collect or attempt to collect any debt. Consequently, Defendants violated 15  
12 U.S.C. § 1692f as well as Cal.Civ.Code § 1788.17.

13 42. Through this conduct, Defendants were collecting an amount (including any  
14 interest, fee, charge, or expense incidental to the principal obligation) when  
15 such amount was not expressly authorized by the agreement creating the debt  
16 or permitted by law. Consequently, Defendants violated 15 U.S.C. § 1692f(1)  
17 as well as Cal.Civ.Code § 1788.17.

18 43. On or about August 23, 2011, Ms. Lander again spoke with Ms. Jordan to find  
19 out why the garnishment occurred even though Ms. Lander's had previously  
20 informed Ms. Jordan that the alleged debt in question was for a different  
21 person and even though Ms. Lander had complied with Ms. Jordan's request  
22 for proof of Ms. Lander's identity.

23 44. Ms. Jordan claimed that she did not receive Ms. Lander's documents and  
24 asked her to re-fax them. After this call, Ms. Lander left work and re-faxed  
25 the documents from Staples in El Cerrito, California to Defendant H&H on or  
26 about August 23, 2011.



- 1 45. Again, on or about August 25, 2011, Defendant PRA, through its counsel  
2 Defendant H&H, garnished an additional twenty-five percent (25%) of Ms.  
3 Lander's wages.
- 4 46. Through this conduct, Defendants used an unfair or unconscionable means to  
5 collect or attempt to collect any debt. Consequently, Defendants violated 15  
6 U.S.C. § 1692f as well as Cal.Civ.Code § 1788.17.
- 7 47. Through this conduct, Defendants were collecting an amount (including any  
8 interest, fee, charge, or expense incidental to the principal obligation) when  
9 such amount was not expressly authorized by the agreement creating the debt  
10 or permitted by law. Consequently, Defendants violated 15 U.S.C. § 1692f(1)  
11 as well as Cal.Civ.Code § 1788.17.
- 12 48. Only after this second garnishment did Defendant H&H correct their error by  
13 terminating garnishment proceedings on Ms. Lander.
- 14 49. On or about August 26, 2011, Defendant H&H contacted Ms. Lander's  
15 employer's payroll department to notify them of release of garnishment  
16 regarding Ms. Lander.
- 17 50. On or about October 11, 2011, Ms. Lander's payroll department informed Ms.  
18 Lander that the garnishment was terminated.
- 19 51. On or about January 18, 2011, after the garnishment was terminated, Ms.  
20 Lander telephoned Defendant H&H to follow up regarding the return of her  
21 garnished income.
- 22 52. During this call Plaintiff again spoke with Ms. Jordan who informed Ms.  
23 Lander that Defendant H&H was at fault for the incorrect garnishment and  
24 that Defendant H&H would send Plaintiff an affidavit to "finalize" the  
25 account.
- 26 53. Subsequently Defendant H&H mailed Plaintiff an "Affidavit of Fraudulent  
27 Use" dated January 30, 2012. Since there was no "fraudulent use" by anyone  
28 other than Defendants, Ms. Lander did not complete the affidavit.



- 1 54. On or about February 9, 2012, HSBC, the original creditor of the alleged debt,  
2 mailed Ms. Lander a letter confirming that the alleged debt was not her  
3 account.
- 4 55. Again, on or about March 9, 2012, Defendant H&H mailed Plaintiff an  
5 "Affidavit of Fraudulent Use." Again, Ms. Lander did not complete the  
6 affidavit as she did not believe the account was fraudulent. Ms. Lander also  
7 relied on the letter from the original creditor stating that this account did not  
8 belong to Ms. Lander.
- 9 56. Due to Defendants' actions, Ms. Lander suffered actual damages in the form  
10 of mental anguish which manifested in symptoms including but not limited to:  
11 nervousness, stress, anxiety, loss of sleep, feelings of irritability,  
12 embarrassment, frustration, all impacting Plaintiff's personal relationships.
- 13 57. Due to Defendants' actions, Ms. Lander further suffered actual damages in the  
14 form of loss of reputation at her place of employment as well as non-  
15 reimbursement of the funds garnished by Defendants.
- 16 58. Had Defendants used reasonable care in dealing with this matter instead of  
17 acting in the abusive and reckless manner in which it did, Ms. Lander would  
18 not have suffered the significant damages she incurred. Instead, Defendants  
19 acted, and continue to act to this day, in a knowingly, willfully, and  
20 intentionally abusive manner by refusing to refund the money Defendants  
21 obtained illegally.
- 22 59. Defendants did not maintain procedures reasonably adapted to avoid these  
23 violations of the FDCPA and California's Rosenthal Act.
- 24 60. To date, Ms. Lander has not been refunded any part of the illegally obtained  
25 garnishment of Ms. Lander's wages by Defendants because Defendants  
26 believe that as an abused consumer Ms. Lander will not have the financial  
27 resources or wherewithal to hire an attorney and pursue her legal rights.  
28

**CAUSES OF ACTION****COUNT I****AS TO ALL NAMED DEFENDANTS****FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)****15 U.S.C. §§ 1692 ET SEQ.**

61. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
62. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
63. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendants.

**COUNT II****AS TO ALL NAMED DEFENDANTS****ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)****CAL. CIV. CODE §§ 1788-1788.32**

64. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
65. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32
66. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to

\$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendants.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against each Defendant, jointly and severally, and Plaintiff be awarded damages from each Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

67. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

**Hyde & Swigart**

Date: April 9, 2012

By: s/ Desiree D. Nguyen  
Desiree D. Nguyen  
Attorneys for Plaintiff